

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MARY CALHOUN

Plaintiff,

V,

UNITED STATES POSTAL SERVICE,

Defendant.

Civil Action No. 04-10210-DPW

ANSWER

COMES NOW Defendant, United States of America, by its attorneys, MICHAEL J. SULLIVAN, United States Attorney for the District of Massachusetts, and Christopher Alberto, Assistant United States Attorney for said District, and answers Plaintiff's Complaint as follows:

COUNT I

1. Defendant admits the allegations in paragraph 1
2. Defendant admits that the United States of America is the only proper defendant in this action pursuant to 28 U.S.C. § 2679(a) and (b)(1). Defendant further admits that the United States Postal Service ("USPS") is an independent establishment of the executive branch of the federal government.
3. Defendant admits that on October 9, 2002, a vehicle driven by a postal employee collided with a vehicle driven by the plaintiff on Park Avenue in Worcester, Massachusetts, but denies

the remaining allegations in paragraph 3.

4. Defendant admits that on October 9, 2002, a vehicle driven by a postal employee collided with a vehicle driven by the plaintiff on Park Avenue in Worcester, Massachusetts and that plaintiff's claims injuries and damages as a result of the accident, but denies the remaining allegations in paragraph 4.

AFFIRMATIVE DEFENSES

1. Plaintiff's recovery, if any, is limited to the damages recoverable under the Federal Tort Claims Act.

2. Pursuant to 28 U.S.C. § 2675(b), Plaintiff is prohibited from claiming or recovering an amount against the Defendant in excess of that set forth in Plaintiff's administrative claim presented to the United States Postal Service that sum being \$20,000.00.

3. Pursuant to 28 U.S.C. § 2412(d)(1)(A), Plaintiff cannot recover attorney's fees from the United States Postal Service

4. Pursuant to 28 U.S.C. § 2674, Plaintiff is proscribed from recovering any amount for pre-judgment interest against Defendant.

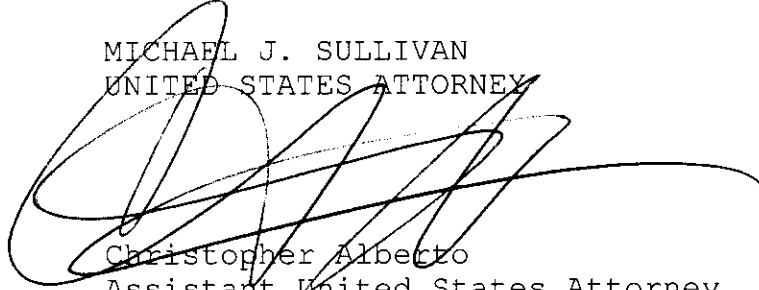
5. Plaintiff is not entitled to a jury trial under the Federal Tort Claims Act. 28 U.S.C. 2402.

6. The United States is the only proper defendant. 28 U.S.C. 1346(b)(1).

WHEREFORE, having fully answered Plaintiffs Complaint, Defendant respectfully moves this Court to dismiss Plaintiff's Complaint, for its costs incurred herein, and for such further relief as is just and proper.

Respectfully submitted

MICHAEL J. SULLIVAN
UNITED STATES ATTORNEY

A large, stylized handwritten signature in black ink, appearing to read 'Christopher Alberto', is written over the typed name and title.

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3/5/04

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was mailed this 5 day of March, 2004, to:

Rickie T. Weiner
Ellis Law Offices, LLP,
33 Pleasant Street, Suite 2
Worcester, MA 01609



Christopher Alberto